IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO. 208 OF 1981

G.T.C. Industries Ltd.,
Office at - Tobacco House,
Vile Parle, Bombay - 400 056. ... Plaintiffs

V/s

M/s. Golden Enterprises,
Business at Golden Enterprises,
18/71 Kallai Road,
Calicut 673001, Kerala & anr. ... Defendants

Mr. Utpal Joshi with D.B.Mehta i/by Thakordas & Madgavkar for the plaintiffs.

None for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 18TH AUGUST, 2004.

P.C.:

1. The plaintiffs have filed this suit against the defendants for recovery of the amount of Rs.1,87,740.34 ps. with interest on principal amount of Rs.1,28,755.76 ps. at the rate of 18% p.a. from the date of filing of the suit till payment or realization.

2. The plaintiffs are in the business of manufacture of cigarattes. Defendant No.1 is a partnership firm carrying on business as a dealer in cigarettes. The second defendant is the partner of defendant No.1.

There were dealings between the parties on various occasions for diverse quantities and qualities of cigarettes. In February, 1977, the plaintiffs sold and delivered to the defendants, pursuant to their orders, goods of the aggregate value of Rs.2,17,370/- and submitted to the defendants their bill dated 14.2.1977. On request of the defendants, the accounts were adjusted as on 30.6.1977 and a sum of Rs.49,614.24 was found lying to the credit of the defendants as against the debit of the above noted amount under the said bills. Due credit was given of the said amount and as on 30.6.1978 a sum of Rs.1,87,740.34 was found due and payable from the defendants. For that purpose, the plaintiffs made demand, however, defendants did not comply with the same and hence the suit is filed.

3. The defendants filed their written statements raising various contentions and seeking dismissal of the suit of the plaintiffs.

4. On the basis of the pleadings, issues were settled. The settled issues and my findings thereon are as under :-

(1) Do the plaintiffs prove that they have supplied diverse qualities and quantities of

cigarettes to the defendants ?

(2) Do the plaintiffs prove that an amount of Rs.1,28,755.76 is receivable from the defendants for supply of cigarettes ?

(3) Do the defendants prove that the invoices raised on the defendants include other expenses like advertising, sales promotion expenses, etc. for and on behalf of the plaintiffs ?

(4) Do the defendants prove that they were submitting statement showing expenses incurred on behalf of the plaintiffs for approval ?

(5) Do the defendants prove that plaintiffs cannot appropriate security deposit lying with the plaintiffs ?

(6) Do the plaintiffs prove that they are entitled to the decree as prayed with interest of 18% p.a. ?

(7) What order and decree ?

My findings on the issues are :-

Issue No.1 :- Affirmative.

Issue No.2 :- Affirmative.

Issue No.3 :- Negative.

Issue No.4 :- Negative.

Issue No.5 :- Negative.

Issue Nos.6 & 7 :- As per final order.

5. At the outset, it may be noted that though the defendants have filed their written statement, they did not remain present for hearing of the suit and suit proceeded ex-parte against the defendants. As against this, the plaintiffs' witness entered the witness box and has proved the contents of his affidavit of evidence. Plaintiffs have also produced compilation of documents alongwith the affidavit of documents stating as to why zerox copies of the documents are filed and has sought permission to lead secondary evidence. Since the plea has gone unchallenged, the permission to lead secondary evidence is given as the reasons mentioned in the affidavit are found to be genuine. In this fashion, the entire evidence of the plaintiffs has gone on record unchallenged and, therefore, I hold that the plaintiffs deserve decree of the suit. Hence the following order:-

O R D E R

The suit is decreed with costs.

The defendants to pay an amount of Rs.1,87,740.34 ps. to the plaintiffs alongwith interest at the rate of 12% p.a. on principal amount of Rs.1,28,755.76 ps. from the date of filing of the suit till payment or realization.

C. c. expedited.

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